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SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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Prepared under the direction of

L. S. Hulbert

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COOPERATIVE RESEARCH AND SERVICE DIVISION

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FARM CREDIT ADMINISTRATION

A. G. Black - Governor

Cooperative Research and Service Division

T. G. Stitts - Chief

W. W. Fetrow - Associate Chief

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Cases involving and affecting the legal status and operations of cooperative associations are being decided by the courts from time to time. In order to assist attorneys for cooperative associations, and others concerned with such associations, in obtaining current information regarding legal questions affecting their organization and operations, summaries such as this are issued quarterly. Requests to be placed on the mailing list to receive issues of this publication should be made to T. G. Stitts, Chief, Cooperative Research and Service Division, Farm Credit Administration, Washington, D. C.

SUMMARY OF CASES RELATING TO FARMERS' COOPERATIVE ASSOCIATIONS

CONTENTS

	Page
President of cooperative held liable to producer for fraudulent misrepresentations	1
Incorporators and stockholders of cooperative held liable for its debts	4
Property of cooperative reservoir company held not taxable	6
Conviction of association manager for embezzlement reversed	9
Cooperative association denied milk license because its members were not paid minimum prices	14

President of Cooperative Held Liable to Producer for Fraudulent Misrepresentations

On October 1, 1935, a producer alleged that he was induced by the president of a cooperative association to sign a contract binding him to ship his milk to the association for five years. Under the contract, the price to be paid for the milk was left to the discretion of the board of directors of the association. While the state Department of Markets fixed prices that were to be paid shippers of milk, it had no authority to fix the price of milk shipped to cooperatives. In order to induce the producer to sign the contract, the president, it was alleged, represented that contract members of the association "were receiving and would continue to receive" from five to ten cents more per cwt. for their milk than the current price fixed by the Department of Markets in the market area, which noncontract members were receiving, and that the producer would, by signing the producers' agreement, receive five to ten cents more per cwt. for his milk than noncontract members. In reliance on these representations, the producer averred that he shipped his milk to the association for two years, when he became aware that the association "never did and never would or intended to pay the prices represented, and that it was so managed that it could not pay the prices set by the Department of Markets." In fact, the producer contended that he received forty cents per cwt. less than the prices set by the Department of Markets.

The producer brought an action in the trial court to recover from the president of the association damages for deceit, but the defendant's demurrer to the complaint on the ground that the facts alleged did not constitute a cause of action, was sustained. Upon appeal to the circuit court, the order of the lower court was affirmed, and an appeal was then taken by the producer to the Supreme Court of Wisconsin. In reversing the order of the circuit court and directing it to enter an order reversing the order of the lower court, the Supreme Court of Wisconsin said in part:

> In support of his demurrer the defendant contends (1) that the facts alleged are insufficient to constitute a cause of action, because the alleged fraudulent representations are promises as to future action and not statements of fact, and therefore do not constitute fraud; and (2) that the alleged misrepresentation that "the plaintiff would, by signing the producers' agreement, receive from five to ten cents more per cwt. for his milk than the noncontract member" is but promissory in character, and inasmuch as it is alleged to have been made prior to and contemporaneously with the making of the contract, the plaintiff cannot show an inconsistent contemporaneous oral agreement, the subject matter of which is covered by the contract. In support of his contentions

the defendant relies upon the rule "that fraud must relate to a present or pre-existing fact and it cannot ordinarily be predicated on unfulfilled promises or statements made as to future events." Beers v. Atlas Assurance Co., 215 Wis. 165, 171, 253 N. W. 584, 587. In view of that rule it is true that in so far as the representations related to but future events or were merely promissory in character, they are not actionable. However, the representation that the contract members of the Co-operative "were receiving" from five to ten cents per cwt. for their milk more than the current price as set by the Department of Markets in the Milwaukee market, which non-contract members were receiving, was not a statement as to a future event or merely promissory as to future action. On the contrary, that representation related to a present or pre-existing fact, and in that respect it was actionable if false.

* * *

Moreover in plaintiff's complaint -- but as a second cause of action, which is however based upon the same fraudulent misrepresentations as the first cause of action and is but part thereof -- he alleges that by reason of the fraud it was necessary for him to engage counsel and incur expenditures to commence an action which is pending against the Co-operative to obtain a cancellation of the contract and recover for the last month's shipment of milk; and that by reason thereof he has been damaged in the sum of $500. If plaintiff incurred such expenditures and costs in collateral litigation as a necessary and proximate result of the deceit, they are recoverable as part of the damages sustained by him. 27 C. J. p. 88, § 234; Sedgwick on Damages, 9th Ed., vol. I, § 241; First Nat. Bank of Hutchinson v. Williams, 62 Kan. 431, 63 P. 744; Osborne & Co. v. Ehrhard, 37 Kan. 413, 15 P. 590; McOsker v. Federal Ins. Co., 115 Kan. 626, 224 P. 53; Curtley v. Security Sav. Society, 46 Wash. 50, 89 P. 180; Graham v. Zellers, 205 Wis. 542, 238 N. W. 385, 78 A.L.R. 353; Sterling Engineering & Const. Co. v. Miller, 164 Wis. 192, 159 N. W. 732. (Underscoring added.)

Hilgendorf v. Schuman, 232 Wis. 625, 288 N. W. 184.

The holding in this case is in line with the weight of authority to the effect that directors or officers are personally liable for violation of the legal rights of others, occasioned by their fraud, trespass, coercion or deceit (Frontier Milling & Elevator Co. v. Roy White Co-op. Mercantile Co., 25 Idaho 473, 138 P. 825; Springman

Paper Products Co. v. Detroit Ignition Co., 236 Mich. 90, 210 N. W. 222; Scott v. Shook, 80 Colo. 40, 249 P. 259; Houston v. Thornton, 122 N. C. 365, 29 S. E. 827, 65 Am. St. Rep. 699; California Grape Control Board, Ltd. v. Boothe Fruit Co., 200 Cal. 279, 29 P. 2d 857), and by the misapplication of funds (Cone v. United Fruit Growers Association, 171 N. C. 530, 88 S. E. 860. See also Lewis v. Council, 291 F. 148; Dome Realty Co. v. Rottenberg, 285 Mass. 324, 189 N. E. 70).

While the directors and officers who are responsible for the perpetration of fraud or other violation of the legal rights of others are personally liable therefor, the association may also be held accountable on the theory that a principal is liable for the acts of its agent. Consequently, if an officer, while acting within the apparent scope of authority conferred upon him by an association, perpetrates a fraud on an innocent third party, or otherwise violates the rights of such party, the association is liable, even though the officer was really acting for his own benefit. (Fidelity and Deposit Company of Maryland v. Merchants National Bank, 223 Ia. 446, 273 N. W. 141; Hill v. Associated Almond Growers of Paso Robles, 90 Cal. App. 291, 265 P. 873; Hamaker v. Fulton Farmers' Ass'n, 271 Pa. 465, 114 A. 627; Engen v. Merchants & Mfrs'. State Bank, 164 Minn. 293, 204 N. W. 963.)

It should also be observed that where a producer has been induced to enter into a marketing contract by false and fraudulent misrepresentations, such contracts may be set aside in a timely suit brought for that purpose, or the producer may defend a suit brought against him by the association for failure to abide by the contract by showing fraud in its procurement. (Kansas Wheat Growers' Association v. Vague, 118 Kan. 240, 234 P. 964; Kansas Wheat Growers' Ass'n v. Massey, 123 Kan. 183, 253 P. 1093; Kansas Wheat Growers' Ass'n v. Rowan, 123 Kan. 169, 254 P. 326; Burley Tobacco Growers' Co-op. Ass'n v. Rogers, 88 Ind. App. 469, 150 N. E. 384; Placentia Co-operative Orange Growers' Association v. Henning, 118 Cal. App. 487, 5 P. 2d 444.)

Likewise, if duress, force or intimidation is used to induce a producer to sign a contract, a producer if not estopped may have it set aside or may defend when sued thereon by showing the circumstances under which it was obtained. (Sun-Maid Raisin Growers of California v. Papazian, 74 Cal. App. 231, 240 P. 47; Commonwealth /Burley Tobacco Society/ v. Reffitt, 149 Ky. 300, 148 S. W. 48, 42 L.R.A. (N.S.), 329.)

Incorporators and Stockholders of Cooperative Held Liable for its Debts

Associated Buyers Cooperative, Inc., an incorporated cooperative association organized under Chapter 185 of the Wisconsin statutes, became insolvent, and a receiver was appointed therefor. Unsecured creditors of the cooperative brought an action against its incorporators and stockholders on a debt incurred by the association. The action was predicated on Section 180.06 (4) of the General Corporation Law, which provided in part as follows:

> "The corporation shall not transact business with any other than its members until one-half of its capital stock shall have been subscribed and one-fifth of its authorized capital actually paid in. * * * If any obligation shall be contracted in violation hereof, the corporation offending shall have no right of action thereon; but the signer or signers of the articles and the subscriber or subscribers for stock transacting such business or authorizing the same, or having knowledge thereof, consenting to the incurring of any debt or liability, as well as the stockholders then existing, shall be personally liable upon the same." (Underscoring added).

Section 185.20 of the Cooperative Act provided as follows:

> "The general corporation law of this state shall apply to all associations, except where said general corporation law expressly exempts such associations, or where the provisions of said general corporation law are opposed to or inconsistent with the provisions of this chapter /ch. 185, Stats./."

The defendants demurred and the demurrer was sustained by the lower court on the ground that Section 180.06 (4) did not apply to cooperative associations organized under Chapter 185.

In reversing the orders of the lower court, the Supreme Court of Wisconsin said in part:

> Section 185.20 Stats., is plain and unambiguous. No interpretation is necessary. State ex rel. Associated Indemnity Corporation v. Mortensen, Commissioner of Insurance, 224 Wis. 398, 400, 272 N. W. 457, 110 A.L.R. 524. The same is true of the other sections mentioned.
>
> Chapter 185, Stats., relates to cooperative associations authorized and empowered to do business in a corporate capacity. The Associated Buyers Cooperative, Inc., is so organized under this chapter. The phrase

" * * * opposed to or inconsistent with the provisions of this chapter," (ch. 185. Stats.), is likewise clear and unambiguous, and not open to judicial construction. Non-technical words and phrases shall be construed and understood according to the common and approved usage of the language. Wadhams Oil Company v. State, 210 Wis. 448, 458, 245 N. W. 646, 246 N. W. 687.

* * *

The purpose of section 180.06 (4) Stats., is obvious. It affords a protection to creditors and to some extent to the shareholders. In Anvil Mining Company v. Sherman, 74 Wis. 226, at page 233, 42 N. W. 226, at page 228, 4 L.R.A. 232, referring to section 1773 (now section 180.06 (4), Stats.), the court said: "The object of the statute seems to be to prevent fictitious and fraudulent corporations from extorting money from confiding stockholders, and obtaining credit, when they have no real basis of capital to do business upon, and no resources to meet their liabilities."

The creditors of a cooperative association incorporated under chapter 185, Stats., are entitled to the same protection as afforded creditors of other corporations by having 50% of the authorized capital stock subscribed for and at least 20% actually paid in. The short life of the instant corporation, Associated Buyers Cooperative, Inc., clearly demonstrates the necessity of a capital structure such as section 180.06 (4), Stats., requires before the corporation may transact business and incur obligations with others than its own members. We take judicial notice of the records in the office of the secretary of state from which it appears that Associated Buyers Cooperative, Inc. was incorporated on September 9, 1939, and from the pleadings in the instant case it appears that it was adjudged insolvent on June 11, 1940.

Schoenburg v. Klapperich, _____Wis._____, 300 N. W. 237.

This case illustrates what is generally true, namely, that the general corporation laws of a State are applicable to cooperative associations formed under a cooperative statute except to the extent that they are inconsistent therewith.

Property of Cooperative Reservoir Company Held not Taxable

The opinion of the Supreme Court of Montana is set forth hereafter in full:

> This action was brought to secure a permanent injunction against the members of the board of county commissioners and the treasurer of Teton county to restrain them in their official capacities from securing a tax deed. The county was a party defendant. Judgment went against the defendants, and the county alone has appealed from the judgment.
>
> In 1906 the Teton Cooperative Reservoir Company was organized as a corporation under the laws of Montana as a mutual company for the sole purpose of storing water and delivering it to its stockholders for irrigation, and not for profit. Its capital stock was divided into one thousand shares. Each share of the capital stock of this company entitled the holder to the use, during the irrigation season of each year, to a "1/1000th part of the waters, water rights and irrigation facilities and systems" of the company, including the right to lease, pledge, sell and dispose of such use.
>
> A reservoir site was set apart by the Department of the Interior, and some 500 acres of land in addition was acquired by this corporation, on which a dam was constructed. Water was impounded in the reservoir and distributed to the stockholders. Following the construction of the reservoir, the taxing authorities of Teton county assessed and levied the usual property taxes on the lands owned in fee, the reservoir, site, dams, ditches, canals and other like property belonging to this corporation. As a result of the delinquency of some or all of these taxes, these authorities threatened to take a tax deed covering this property of the corporation.
>
> The stock of this corporation is owned as follows: 804 shares by the Bynum Irrigation District, a public corporation, which was created under our irrigation district law; 156 shares by the plaintiff Brady Irrigation Company, and some 40 shares by certain individuals. Each holder of a share of the Brady Irrigation Company represents and controls 1/500 part of all of the water appropriated and diverted by the corporation and is entitled to control the use of such waters subject to the rules and regulations of the corporation. The interveners are the holders of bonds issued by the Bynum Irrigation District.

The owners of the stock in the Teton Cooperative Reservoir Company do not own the equitable title to the property of that corporation, but their relation to it is one of contract. Hyink v. Low Line Irrigation Co., 62 Mont. 401, 205 P. 236; Dyk v. Buell Land Co., 70 Mont. 557, 227 P. 71. These contracts give to the stockholder the right to receive, through the irrigation facilities of the Teton Company, his pro rata share of the water stored. The shareholder in the plaintiff company likewise has a contractual right to his pro rata share of the water received by that company. These rights, when used on certain lands, become appurtenant to such lands. Sec. 6671, Rev. Codes. The aggregate value of all of these rights is the total value of the property owned by the Teton Company, and its property has no other use than the storing and distribution of water in performance of these contractual rights.

This court said in the case of Hale v. County of Jefferson, 39 Mont. 137, 101 P. 973, 975: "Viewed as independent property rights, ditches and the right to use the water conveyed by them are property subject to taxation; but, when made appurtenant to lands, they have no independent use. So situated and used, the value of this species of property enters as an element into the value of the corpus or principal estate to which it is attached or appurtenant, and bears its proportionate burden of taxation by the added taxable value which it gives to the principal estate. * * * 'The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property; but rests solely upon the value. But the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use.' Cleveland, etc., Ry. Co. v. Backus, 154 U.S. 439, 14 S. Ct. 1122, 38 L. Ed. 1041. To illustrate: A ditch and water right, attached to agricultural lands, add a large element of value to them, by contributing to their productiveness, which, in turn, determines their actual value. They are taxed when the lands are taxed upon their value thus increased."

In the case of Verwolf v. Low Line Irrigation Co., 70 Mont. 570, 227 P. 68, 71, this court said: "A water right -- a right to the use of water -- while it partakes of the nature of real estate (Middle Creek Ditch Co. v. Henry, 15 Mont.

558, 39 P. 1054), is not land in any sense, and, when considered alone and for the purpose of taxation, is personal property. Helena Water Works Co. v. Settles, 37 Mont. 237, 95 P. 838. When considered otherwise, it is not subject to taxation independently of the land to which it is appurtenant."

We concede the rules announced in the cases of Barnes v. Smith, 48 Mont. 309, 137 P. 541; State ex rel. Bankers' Trust Co. v. Walker, 70 Mont. 484, 226 P. 894; and Sun River Stock & Land Co. v. Montana Trust & Savings Bank, 81 Mont. 222, 262 P. 1039, to be correct. In those cases there were considered corporatiens organized for profit. In such corporations the stockholder acquires the right to share in the profits, if any, in the form of dividends. Here the stockholders gain a right to secure water from the corporation to irrigate their lands.

While the general rule is that courts will not ordinarily look behind the veil of the corporate entity, it at times becomes material "to consider what is this thing which is described as a 'corporation.'" (Palmolive Co. v. King, 1933 Canada L.R. 131.) The Supreme Court of the United States has not hesitated, when the facts warranted it, in looking behind the veil of the corporate entity in tax cases, as is illustrated by the cases of Southern Pacific Co. v. Lowe, 247 U. S. 330, 38 S. Ct. 540, 62 L. Ed. 1142, and Gulf Oil Corporation v. Lewellyn 248 U. S. 71, 39 S. Ct. 35, 63 L. Ed. 133.

The judgment is affirmed. (Underscoring added.)

Brady Irr. Co. v. Teton County, 107 Mont. 330, 85 P. 2d 350.

Particular attention is called to the fact that the court drew a sharp distinction, from a tax standpoint, between a commercial and a cooperative irrigation company, holding in brief that in the case of a cooperative irrigation company, where the right to water was appurtenant to the lands of the cooperators, the value of all the property of the cooperative irrigation company was reflected in the value of the lands of its individual members.

Conviction of Association Manager for Embezzlement Reversed

The manager of a citrus association, who also served as director and secretary, was convicted on five counts for grand theft, by the lower court, and brought an appeal to a district court of appeals, which reversed and remanded the case.

It had been the practice of the association for many years to make advances from time to time to some of its growers, to assist them in financing their citrus operations. Such advances were made to the president, vice president and other directors as well as the manager. Amounts advanced were paid out by the association's checks which were signed by the manager, and also by either the president or the vice president.

The evidence showed that the board of directors left it to the discretion of the manager to make advances as he saw fit, and the monthly report submitted by the manager to the board merely showed the lump sum of advances made, but did not itemize the advances or show the names of the individuals to whom loans had been made. In order to facilitate the making of advances, it was the practice of the president or vice president to leave with the manager checks signed in blank. In making the advances, the manager used his own judgment and apparently based his determination of the amounts to be advanced upon his estimation of the value of the "potential crop," consideration being given to existing market conditions. In practice, advances were sometimes made, even though the crops were covered by mortgages in favor of other parties.

In reversing the judgment of the lower court and remanding the cause for a new trial, the district court of appeals said in part:

> The main question presented is whether the evidence is sufficient to support the verdict and judgment. While the offense in question is now prosecuted as grand theft the gist of the offense is embezzlement, being the fraudulent appropriation of property by a person to whom it has been intrusted, as defined in section 503 of the Penal Code. The prosecution's theory, as clearly stated during the trial, was that while the appellant had the right to make advances to himself he had made such advances in excess of amounts that were justified by his crops and that "his knowledge of the condition of his account charges him with notice that he wasn't in good faith, but was fraudulently appropriating to his own use". In other words, the

contention is that while the appellant was authorized to make advances to himself he knowingly took advances to an extent not warranted by the conditions and thereby fraudulently appropriated money of the association which had been intrusted to him.

Aside from the fact that his responsibility for handling the funds of the association, in connection with these advances, was in a measure shared by the president or vice-president who necessarily signed the checks, and by all of the directors who approved them without examination, it may first be observed that there is no evidence that the appellant exceeded any specific direction or authority given to him. All of the evidence indicates that no limit as to the amount of advances was fixed or contemplated, but that such advances, while left to the discretion of the manager, were to be considered in connection with the amount and quality of a member's crop and the prospective market conditions. Apparently, the advances were supposed to be based largely on what appeared to be the likelihood of repayment from the proceeds of the crop. This fact explains the absence of any evidence to the effect that any limit had been placed upon the appellant's authority to make loans to any member, or to the effect that members were entitled to equal advances in proportion to their acreage.

It seems to be here contended that appellant's guilt was established since the evidence discloses that about one-third of the money advanced that season by this association was advanced to him. There were about 1200 acres of oranges owned by the members of this association, of which the appellant owned or controlled 174½. In other words, while he owned about one-seventh of the acreage he advanced to himself about one-third of the total amount which was advanced to all grower members. On the other hand, while he owned about one-seventh of the acreage, he was convicted of appropriating for himself about one-twelfth of the total amount advanced to members. There is no evidence as to how many of the growers desired or secured such advances, or of the acreage owned by those members who shared in the advances made. If it be assumed that the members who secured advances held only one-half of the acreage in the association, it would follow that the appellant received only his proportionate share per acre.

However, as we have pointed out, there is nothing in the evidence to the effect that the members were entitled to share

in the advances either equally or in proportion to their acreage. Other factors were to be taken into consideration, particularly the amount and prospective value of their crops. Considered from this angle, which is the only one that would support a conviction, there is no evidence to indicate that the appellant received advances which were not warranted by conditions as they then appeared. While it is contended that he should have known that an advance of $100 an acre on his orange holdings was excessive and unjustified, at least to the extent of the $28 per acre on which he was convicted, there is an entire absence of evidence as to the amount, quality and apparent value of his prospective crops of oranges, as compared with those of other members to whom advances were made. What he knew or what he should have done must be judged in the light of conditions at the time and not of subsequent developments. The evidence shows that $3,375 of the $4,855, for the taking of which he was convicted, was advanced during March of that year, and another $980 before the season was far advanced. It appears without conflict that, due to a bad freeze the preceding year, the outlook for favorable prices and market conditions was unusually good during the spring of 1938 and at least up to the middle of that season. These expectations were not realized due to market changes which are not even charged to the appellant.

Not only is there no evidence to show that an average advance of $28 per acre upon which he was convicted, or even of $100 per acre with which he was charged, was not justified by the amount and quality of his crops under the market conditions then appearing, but there is evidence which indicates that such advances were not unknown or unusual in the general course of such business. During that very season, 1938, a bank in Claremont loaned the appellant $15,000 on a crop mortgage, covering 45 acres of his groves with a second trust deed on 25 of those acres. One of the directors testified that during that same season, 1938, he received an advance from this association of $1,576 on 15½ acres of oranges when his land was covered by first and second mortgages and the crop was also mortgaged to an outsider. This was an advance of about $100 an acre and this director testified that he considered it proper and right at the time it was made, and that he considered that similar advances were rightfully made. This turned out to be a bad year and the proceeds of this director's crop were insufficient to pay this advance, leaving him indebted to the association in the sum of $872.14,

or about $55 an acre. The undisputed evidence is that in 1935, the appellant and another gave a bank a crop mortgage on the oranges then growing on the 80-acre parcel involved in count VI here, securing a loan of $30,000, about $375 an acre, and that the crop of oranges thereon brought enough to pay off this mortgage that season.

While the respondent argues that the appellant received about one-third of the entire amount advanced to its growers by the association that year, it was not shown that such advances were not justified by his prospective crops and the apparent conditions and it is not even here suggested that the prospective value of his crops did not bear a similar relation to the value of all crops upon which advances were made. No contention is made that any part of these advances was used by the appellant for any purpose other than to maintain and retain these groves upon which oranges were to be produced. While portions were used to pay interest and principal on encumbrances on these lands, this is a part of the necessary financing involved in the production of oranges and the evidence shows that advances were customarily made to other grower members for similar purposes. In addition to all of the other matters affecting the reasonableness of the advances the appellant made to himself, under the conditions apparent at the time, a further fact is important. The appellant had a salary coming of $475 a month, which he did not draw during this period but which he left as a further credit upon his advances. This salary amounted to $5,016.16 at the time of his resignation on November 22, 1938. This credit materially affects the apparent situation upon which he acted at the time the advances were made.

At the close of this admittedly bad season it developed that the proceeds of appellant's crops were not sufficient to pay his advances, leaving him indebted to the association. This is also true of many of the other growers, including some of the directors. The only inference justified by the evidence is that in an ordinary or average season the returns from these various crops would have paid the respective advances made. That they did not do so in this year is unfortunate, but it is far from showing that in making advances which at the time seemed justified by conditions and by past experience the appellant is to be charged "with notice that he wasn't in good faith, but was fraudulently appropriating to his own use." We are unable to find any evidence in the transcript which would support the conclusion that the advances taken by the appellant upon his crops were in excess

of his authority, that they were out of proportion to the advances made to others, or that they were made with knowledge on the part of the appellant that they were excessive or not justified by the size and quality of his crop under market conditions as they appeared at that time. (Underscoring added.)

People v. Mills, 41 Cal. App. 2d 260, 106 P. 2d 216, rehearing denied 41 Cal. App. 2d 260, 106 P. 2d 628.

Among other things, this case appears to emphasize the importance of a manager's keeping a board of directors fully informed, and of an association's employing businesslike procedures.

Cooperative Association Denied Milk License Because Its Members Were Not Paid Minimum Prices

In the case of United Milk Producers of California v. Cecil, _____ Cal. App. _____, 118 P. 2d 830, it appeared that the United Milk Producers of California was licensed by the Director of Agriculture under the California Milk Control Act, but that following a hearing, such license was revoked because the members of the cooperative were not paid the minimum prices for milk prescribed by the Director of Agriculture.

In this connection, the following quotations are taken from the opinion in the case:

> As we view the several contentions of the parties, the real question is whether or not the "Director" has authority, under the Milk Control Act (Agricultural Code of California, chap. 10, div. IV), to fix the minimum price which must be paid to its members by cooperative marketing associations organized under the provisions of chapter VI, division 4 of said code, St. 1933, p. 162, § 671 et seq. The litigants appear to concede that if the Milk Control Act governs the situation, the order under attack must be sustained. It is admitted by petitioners that the individual producers who constitute United Milk Producers (hereinafter referred to as "United"), for a number of months prior to, and also at the time of said hearing, did not receive the minimum price for their milk prescribed and fixed by the "Director". This was held by the "Director" to constitute a violation of the law and regulations made pursuant thereto. The exact nature of the controversy, and the conflicting views in respect thereto, are thus aptly summarized by petitioners in their reply brief:
>
> > "As pointed out at the argument, the above contention of respondents assumes the point in issue. The question is whether the Milk Control Act requires that the equivalent of the Directors' control prices be paid in all cases, or whether under the laws of the State there is an exception applicable to cooperatives. * * * Respondents, however, contend that all cooperative-distributors, without exception, are required by the Milk Control Act to return to their members at least the control prices. If a cooperative is unable to return the equivalent of these prices, presumably it must go out of the distributing business. This, we submit, is something which, if it is to be said, should be said by the legislature, and not by the courts. The statute does not expressly say that cooperatives must go out of the distributing business

under these circumstances, and a provision of this kind, we submit, should not go into the statute by implication."

Petitioner, "United", was organized May 16, 1933, under the said provisions of the Agricultural Code relating to non-profit marketing associations (hereinafter designated as "Marketing Associations"), and passed by the legislature in 1933. From the date of its organization until August 1, 1940, "United" sold milk and cream, produced by its members, to various distributors. On August 1, 1940, "United" entered into a contract with "Borden", whereby "Borden" agreed to process and distribute the fluid milk and cream produced by the members of "United", and to return to "United" the proceeds of such operations less all expenses of operation and compensation to "Borden", all as specified in the contract. The contract was to continue for two years and thereafter until terminated by either party upon six months' notice. Ever since August 1, 1940, "United" and "Borden" have been, and they now are operating under the contract, and "Borden" has accounted to "United" for the proceeds of such operations, less the deductions provided in the contract.

In 1937, the Milk Control Act was passed. The first section thereof (Agricultural Code, sec. 735) is headed "Legislative Declaration", and it reads in part as follows:

"(a) The production and distribution of fluid milk and of fluid cream and the dissemination of accurate, scientific information as to the importance of milk and other dairy products in the maintenance of a high level of public health, is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of police powers of this State for the purpose of protecting the health and welfare of the people of this State.

"(b) It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and that the production, transportation, processing, storage, distribution or sale of fluid milk and fluid cream in the State of California is an industry affecting the public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have been carried on and are now being carried on in the production, marketing, sale, processing or distribution of fluid milk and fluid cream, which constitute a constant menace to the

health and welfare of the inhabitants of this State and tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced; that health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair the future supply of fluid milk; and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity; that it is the policy of this State to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers."

Under subsequent provisions the "Director" is the administrative agent of the state, and he is given authority to "prescribe minimum prices to be paid by distributors in accordance with a stabilization and marketing plan for fluid milk * * *." (Sec. 735.4, subs. [b] and [4].) Section 735.3, subdivision (f), provides: "'Distributor' means any person whether or not such person is a producer or an association of producers, engaged in the business of distributing milk or handling fluid milk * * *."

It must be admitted that on the face of the law all persons are included within its scope. Section 735.3, subdivision (k), reads: "'Person' means an individual, firm, corporation, association or any other business unit."

* * *

Petitioners strongly rely upon section 1219 of the Agricultural Code, which is a portion of the law dealing with cooperative marketing associations. Said section reads as follows: "The general corporation laws of this State and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter."

They argue that the foregoing section establishes a rule of construction which must control here. It will be noted, however, that it has reference only to "the general corporation laws of this State". The inconsistency and conflict here do not come from such laws, but from the Agricultural Code. There is therefore no rule of construction laid down for our guidance. Furthermore, it is the general rule that one legislature cannot enact irrepealable legislation or limit or restrict its own power or the power of its successors as to the repeal of statutes, and an act of one legislature is not binding upon, and does not tie the hands of future legislatures. 59 C. J., § 500, pp. 899, 900.

* * *

It must be apparent that the Cooperative Marketing Act, passed several years prior to the Milk Control Act, was inconsistent with the latter. Under the Marketing Act, the members were permitted to enter such marketing contracts as they wished, and to distribute the proceeds from the sale of milk among themselves, after deducting necessary expenses. On the other hand, the Milk Control Act gives authority to the "Director" to fix the minimum amount which a producer may receive for his milk. In this connection the word "price" is used in the latter act. Considering the act in its entirety, we think the legislature did not use that word in a technical sense, and that it can be reasonably construed to include any return which is received by the producer from the distributor in the marketing of his product. It is therefore our conclusion that the Cooperative Marketing Act, in respect to the particulars mentioned, was impliedly repealed by the Milk Control Act, and that cooperative marketing associations are distributors for their members, and therefore subject to its operation and control.

Petitioners, in attempting to show lack of legislative intent to repeal, point out that a cooperative, from the very nature of its organization, cannot return to (the) price fixed by the "Director" for milk, if its net returns are less than such price; that in cooperatives, the producer-member is the owner, and that he receives the profits from its marketing activities, and should therefore bear any loss. It must be assumed that the foregoing effect upon cooperative organizations must have been foreseen by the legislature, but that they considered that the health and general welfare of the people as a whole were paramount over such matters as the internal management of such associations, and their customary method of operation. The proof of a legislative intent to make the Milk Control Act all inclusive is so apparent and strong that considerations of the foregoing nature must give way before it. By its very terms the act covered the distribution by "United". The burden was therefore upon "United" to show that it was excepted from the enactment. This burden, as we have indicated, they have failed to sustain.

The authorities relied upon by petitioners are practically all directed toward the use and meaning of the word "price" in the Milk Control Act. It is contended that the use of that word indicates an intent to exclude cooperatives from its operation. They state: "We assume that respondents will contend that the term 'price', as used in the Milk Control Act and in the marketing and stabilization plan, must be given a broader and more inclusive meaning than its ordinary sense in order to effect the purpose of the Act by assuring all producers a minimum return for their milk. We point

out, however, that if the term were given this broad construction, the Director would be authorized to fix not only the minimum return which Borden must make to United under the agency contract, but also the minimum return which every cooperative-distributor must make to its members. In no event could the term 'price' be given a broad meaning to cover the one situation and a different and narrower meaning to exclude the other."

* * *

It is urged by petitioners that in the 1941 session of the legislature, proposed amendments to the Milk Control Act which would have included cooperatives within its scope, failed of passage. Thus, they say, the legislature must have intended, when the original act was passed, to exclude cooperatives from its scope. While this may be some evidence of legislative intent, it can be argued with equal force that the omission to include the amendments was due to the fact that the legislature considered that the bill already included cooperatives, and that such amendments would be mere surplusage.

* * *

The parties devote considerable time to the discussion of the question whether or not the contract between petitioners was one of agency or one under which "Borden" actually purchased the milk from "United". We do not deem it necessary to discuss that phase of the matter. We have shown that "United" was subject to the provisions of the Milk Control Act. If "Borden" was its agent, as petitioners contend, they were in exactly the same predicament as their principal, and violated the Milk Control Act, as the member-producers of "United" did not receive the minimum amount fixed by the "Director" as the price of the milk.

In United States v. Rock Royal Co-Operative, Inc., 307 U. S. 533, 59 S. Ct. 993, 83 L. Ed. 1446 (See Summary No. 3, page 1), the United States Supreme Court interpreted the word "purchased" in the Agricultural Marketing Agreement Act of 1937 as not referring exclusively to sales, but as having the more general meaning of "acquired for marketing," thus including a cooperative that functioned on an agency basis. The court further held, because a provision in the Federal statute provided that "Nothing * * * shall * * * prevent a cooperative * * * from * * * making distribution thereof /net proceeds/ * * * in accordance with the contract between the association and its producers," that it was not a valid objection to the milk marketing order involved that it permitted agricultural cooperative associations to return to their members less than the "uniform prices."